

REMARKS

The Final Office Action mailed November 14, 2007, has been received and reviewed. Claims 1-24, 30, and 31 are pending in the subject application. It is proposed herein that each of claims 1, 4, 13, 19-24, 30, and 31 be amended as set forth above. Reconsideration of the pending application in view of the proposed amendments and the following remarks is respectfully requested.

Summary of Applicant Initiated Telephonic Interview of January 3, 2008

Applicants thank the Examiner for the telephonic interview conducted on January 3, 2008. In ¶ 40 of the *Office Action* of November 14, 2007 the Examiner stated that “[a] less ambiguous claim language regarding the position of the first area and the second area may alleviate current prior art rejection.” During the Interview the Examiner reiterated this statement and his prior rejection stating that the Objectdock reference *only* taught overlapping first and second areas. Accordingly, the Examiner stated that an amendment to the claims reciting that the first and second areas were positioned such as to not overlap each other would result in the removal of the Objectdock reference as prior art. Upon entry of the proposed amendments recited herein, independent claims 1, 13, 19, and 30 will to recite this limitation.

Rejection under 35 U.S.C § 112

Claim 30 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, as the time the application was filed, was in possession of the claimed invention . Claim 30 recites, in part: “... a start menu divided into a plurality of discrete sections, at least one of the sections containing only operation system specific menu items... .”

In the *Office Action* of November 14, 2007, the Examiner notes that there is no mention of “discrete sections” in the specification. In ¶ 0049, lines 1-2 of the *Specification*, an exemplary embodiment of the invention is disclosed wherein the start menu is divided into two sections. These two sections would be recognized by one skilled in the art to be discrete sections as well. As such, the withdrawal of 35 U.S.C. § 112, first paragraph, rejection to claim 30 is respectfully requested.

The Examiner further noted in the *Office Action* that claims 13, 19, and 30 recited the limitations “its”, and were lacking in antecedent basis, and therefore rejected under 35 U.S.C. § 112, second paragraph. Upon entry of the proposed amendments, claims 13, 19, and 30 will recite proper antecedent basis and the rejection will be overcome. As such, Applicants respectfully requests withdrawal of the 35 U.S.C. § 112, second paragraph, rejections of claims 13, 19, and 30.

Rejection under 35 U.S.C. § 101

Claims 19-24 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter as the claims allegedly recited computer readable media that may comprise communication media that includes an electromagnetic signal. Upon entry of the proposed amendments, claims 19-24 will read, in part: “...computer readable storage medium...”

Claims 19-24 have been amended to more clearly recite an article of manufacture. As such, it is respectfully submitted that claims 19-24 are directed to statutory subject matter and withdrawal of the 35 U.S.C. § 101 rejection of the claims is respectfully requested. Claims 19-

24 are believed to be in condition for allowance and such favorable action is respectfully requested.

Rejection under 35 U.S.C. § 102(a)

A.) Applicable Authority

“A claim is anticipated only if each and every elements as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdeggal Brothers v. Union Oil Co. of California*, 814 F.3d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1336, 2 USPQ 2d 1913, 1920 (Fed. Cir. 1989). *See also*, MPEP §2131.

B.) Anticipation rejections based on Objectdock

Claims 1-8, 10-16, and 18-24 stand rejected under 35 U.S.C. § 102(a) as being anticipated by <http://web.archive.org/web/2003083152245/http://stardock.com/video/demo-objectdock.wmv>, (hereinafter the “Objectdock reference”). As the Objectdock reference fails to describe, either expressly or inherently, each and every element as set forth in the rejected claims, Applicant respectfully traverses this rejection, as hereinafter set forth.

In the *Office Action* of November 14, 2007 the Examiner stated at ¶ 40 that “[a] less ambiguous claim language regarding the positioning of the first area and the second area may alleviate current prior art rejection.” The Examiner reiterated this position during a telephonic interview conducted on January 3, 2008.

As discussed above, the Examiner stated in the telephonic interview of January 3, 2008 that an amendment to the claims clarifying the positioning of the first and second areas would remove the Objectdock reference as prior art.

Upon entry of the proposed amendment, independent claims 1, 13, 19, and 30 will be amended to clarify this alleged ambiguity. Claim 1 will read, in part: "... wherein the first and second areas do not overlap... ." Claims 13 and 19 will read, in part: "... wherein the animated three-dimensional appearing icon is displayed in a different, non-overlapping discrete section from ~~its~~ the corresponding menu item... ." Claim 30 will read, in part: "...wherein the animated three-dimensional appearing icon is displayed in a different, non-overlapping discrete section from ~~its~~ the corresponding menu item... ."

As such, it is respectfully submitted that the Objectdock reference fails to describe, either expressly or inherently, each and every element of independent claims 1, 13, 19, and 30. Accordingly, claims 1, 13, 19, and 30 are not anticipated by the Objectdock reference and withdrawal of the 35 U.S.C. § 102(a) rejections of the claims is respectfully requested. Claims 1, 13, 19, and 30 are believed to be in condition for allowance and such favorable action is respectfully requested.

Claims 2-8 and 10-12 depend, either directly or indirectly, from claim 1 and, accordingly, these claims are believed to be in condition for allowance for at least the above-cited reasons. Claims 14-16 and 18 depend, either directly or indirectly, from claim 13 and, accordingly, these claims are believed to be in condition for allowance for at least the above-cited reasons. Claims 20-24 depend directly from claim 19 and, accordingly, these claims are believed to be in condition for allowance for at least the above-cited reasons.

Each of claims 2-8, 10-12, 14-16, 18, and 20-24 are believed to be in condition for allowance and such favorable action is respectfully requested.

Rejection under 35 U.S.C. § 103(a)

A.) Applicable Authority

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some reason, or suggestion or motivation found either in the prior art references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the prior art reference or to combine prior art reference teachings to produce the claimed invention. See, *Application of Bergel*, 292 F. 2d 955, 956-957 (1961). Thus, in order “[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success [in combining the references]. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” See MPEP § 2143. Recently, the Supreme Court elaborated, at pages 13-14 of *KSR*, it will be necessary for [the Office] to look at interrelated teachings of multiple [prior art references]; the effects of demands known to the design

community or present in the marketplace; and the background knowledge possessed by [one of] ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the [patent application].” *KSR v. Teleflex*, 127 S. Ct. 1727 (2007).

B.) Obviousness Rejections Based on Objectdock in view of U.S. Patent No. 5,452,414.

Claims 9, 30, and 31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Objectdock, in view of U.S. Patent No. 5,452,414 to Rosendahl et al. (hereinafter the “Rosendahl reference”). As the Objectdock reference and the Rosendahl reference, whether taken alone or in combination, fail to teach or suggest all of the limitations of each of the rejected claims upon entry of the proposed amendments, Applicant respectfully traverses this rejection, as hereinafter set forth.

Dependent claim 9 recites a computer generated graphical user interface of claim 8 wherein the animated icon rotates based on the movement of the pointer. As discussed above, upon entry of the proposed amendments claim 1 will read, in part: “... wherein the first and second areas do not overlap...” Per the *Office Action* of November 14, 2007 and the Interview of January 3, 2008, entry of the proposed amendments will remove the Objectdock reference as prior art.

Claim 9 depends indirectly from claim 1 and accordingly, this claim is believed to be in condition for allowance for at least the above-cited reasons. Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 9.

Upon entry of the proposed amendments, independent claim 30 will read, in part: “...wherein the animated three-dimensional appearing icon is displayed in a different, non-

overlapping discrete section from its the corresponding menu item... ." As discussed above, entry of this proposed amendment will remove the Objectdock reference as prior art. Claim 30 is believed to be in condition for allowance for at least the above-cited reasons. Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 30.

Claim 31 depends directly from claim 30 and accordingly, this claim is believed to be in condition for allowance for at least the above-cited reasons. Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 31.

C.) Obviousness Rejections Based on Objectdock in view of U.S. Patent Application Publication No. 2004/0179043 A1.

Claim 17 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Objectdock, in view of U.S. Patent Application Publication No. 2004/0179043 A1 to Viellescaze et al. (hereinafter the "Viellescaze reference"). As the Objectdock reference and the Viellescaze reference, whether taken alone or in combination, fail to teach or suggest all of the limitations of each of the rejected claims upon entry of the proposed amendments, Applicant respectfully traverses this rejection, as hereinafter set forth.

Claim 17 depends indirectly from claim 13 and accordingly, this claim is believed to be in condition for allowance for at least the above-cited reasons. Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claim 17.

Each of claims 9, 17, 30, and 31 are is believed to be in condition for allowance and such favorable action is respectfully requested.

CONCLUSION

For at least the reasons stated above, upon entry of the proposed amendments, each of claims 1-24 and 30-31 are believed to be in condition for allowance. Applicant respectfully requests entry of this Amendment, withdrawal of the pending rejections, and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or ahale@shb.com (such communication via email is herein expressly granted) – to resolve the same.

It is believed that no fee is due in conjunction with the present communication. However, if this belief is in error, the Commissioner is hereby authorized to charge any additional amount required, or credit any overpayment, to Deposit Account No. 19-2112 referencing Attorney Docket No. MFCP.139203.

Respectfully submitted,

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